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Working Party No. 3 on Co-operation and Enforcement

Executive Summary of the Roundtable on Efficiencies in Merger Control

Annex to the Summary Record of the 141st meeting of Working Party 3 on Co-operation and Enforcement

17 June 2025

This Executive Summary by the OECD Secretariat contains the key findings from the discussion of the Roundtable on Efficiencies in Merger Control held during the 141st meeting of the Working Party 3 on Co-operation and Enforcement held on 17 June 2025.

More documents related to this discussion can be found at:
https://www.oecd.org/en/publications/efficiencies-in-merger-control_f4ce548f-en.html

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Executive Summary of the Roundtable on Efficiencies in Merger Control

By the Secretariat¹

On 17 June 2025, the OECD Working Party No. 3 on Co-operation and Enforcement held a roundtable to discuss how competition authorities assess efficiencies in the analysis of mergers. Taking into account the background note prepared by the OECD Secretariat, the written contributions, as well as the discussion by the expert panelists, the following key points emerged:

1. Competition authorities widely recognise the role of efficiencies in mergers and stress the relevance of transparent, well-defined frameworks to assess them.

Most merger regimes contain provisions allowing competition authorities and/or courts to consider efficiencies in the assessment of mergers. While some jurisdictions have explicit mentions to efficiencies in their merger laws, others consider them within the general framework for assessing the effects of the merger on competition. Merger guidelines contain competition authorities' approach to efficiencies in most jurisdictions.

Efficiency claims are usually more relevant in merger analysis at a late stage, when concerns that a transaction may be anticompetitive are raised. In some jurisdictions, their evaluation takes place within the competitive assessment to determine if the transaction raises competition concerns or not. In others, efficiencies are considered in a staged approach. First, when competition authorities decide whether to challenge a merger or authorise it in the case of voluntary regimes with authorisation procedures. Secondly, after a merger is determined to be anticompetitive. At this second stage, efficiencies are conceived as a rebuttal (i.e. as an element that can possibly offset the already-identified competition concerns).

2. There is convergence in the type of efficiencies that authorities are open to consider, with authorities giving more weight to efficiencies linked to prices.

The type of efficiencies usually considered in the assessment of mergers includes productive and allocative efficiencies, which tend to be evaluated from a static perspective, and dynamic efficiencies. The latter include changes in incentives or ability to innovate, learning by doing, and, in general, synergies that impact research and development.

Competition authorities and courts give different weights to these efficiencies with merger guidelines normally containing explanations of the types of efficiencies that are most likely to be considered. Generally, preference is revealed towards efficiencies that are linked to prices. Competition authorities and courts tend to be more open to savings in variable rather than fixed costs. Authorities and courts also agree that the later the efficiencies are expected to materialise, the less weight they are assigned.

Dynamic efficiencies, such as those related to innovation, are also acknowledged by competition authorities, although they are less susceptible to measurement and verification.

¹ This Executive Summary does not necessarily represent the consensus view of Working Party No. 3. It does, however, encapsulate key points from the discussion.

3. Some alignment can be found in the criteria for the assessment of efficiencies in merger control across OECD jurisdictions. The most common criteria include efficiencies need to be substantial, verifiable, and merger specific.

When reviewing the current practice of competition authorities in assessing efficiencies in merger control, some key aspects converge. Efficiencies must be merger-specific and verifiable. The latter means that they should be likely to materialise, timely and sufficient. Merger specificity mean that efficiencies should be the direct result of the merger and can only materialise (or at least to the same extent) if the merger consummates. In other words, that there are not less anticompetitive (realistic) means of achieving those efficiencies.

In all jurisdictions, the burden of proof or production of evidence lies with the merging parties and competition authorities concur that as rigorous as having to prove anticompetitive effects, claiming efficiencies also necessitates more than vague assertions and entails a substantial reliance on different sources of evidence, typically complementary in nature, that can endure testing.

4. Areas where views among competition authorities are less aligned include the degree to which efficiencies should fully compensate the consumers harmed by the transaction, and whether broader public interests may be considered as efficiencies

The assessment of merger efficiencies strongly depends on which welfare standard the authority applies. For instance, pass-on to consumers is required when the authority relies on a consumer welfare standard and becomes less relevant in other cases. In these cases, competition authorities and courts require merging parties to demonstrate that the efficiencies will not solely benefit their interests but will also be sufficiently transmitted to consumers in the relevant market. This ensures that consumer welfare does not diminish following the merger, which would be the primary goal of the intervention if the transaction is deemed anticompetitive.

Moreover, in some jurisdictions, competition authorities can evaluate efficiencies beyond the relevant market in which the merger is being analysed. When this is the case, authorities usually balance how these efficiencies improve the competitive conditions in a different market against the impediments to competition in the relevant market for the transaction.

On a broader scale, there are jurisdictions that may consider non-competition benefits as efficiencies. In those cases, mergers can be approved or not challenged when they harm competition in a relevant market, if there is a greater benefit arising from the transaction that benefits a different set of agents (e.g. consumers in other markets) or the economy. Institutional settings and regulation related to considering public interests vary. While in some cases, public interests are included in the competition authority's overall assessment of the effects of the merger, in others, different public agencies are those in charge of looking at non-competition benefits of the transaction and issue a decision in parallel of that of the competition authority.

5. Efficiency defences are rarely accepted in practice and there may be multiple reasons for this, including that the sample where they could play a role is small, lack of proper substantiation, practical issues to assess them and limited evidence to support them

Efficiencies have rarely been found to offset competitive harm in merger cases, and even in those instances, they were not the primary basis for the authority's or court's decision. Several factors contribute to this. First, most mergers do not raise significant competition concerns, meaning only a small subset undergoes in-depth analysis where efficiency claims might be relevant. Second, efficiency claims are often difficult to substantiate, with many lacking sufficient evidence and therefore being easily dismissed by authorities. Third,

practical challenges, such as measuring and incorporating efficiencies into merger reviews, further limit their impact.

These complexities co-exist with ex-post evidence suggesting that efficiencies from mergers are often limited, short-lived, or fail to materialise. Academic research also indicates that efficiencies are less likely to arise in highly concentrated markets, precisely where such claims are most frequently made. This evidence supports a cautious approach by competition authorities and courts when assessing efficiency claims.

In practice, verifiability is often the most difficult criterion to meet, as it relies heavily on assumptions and projections about the likelihood and magnitude of efficiencies. Merger-specificity is also challenging, since parties may be, at least in theory, able to achieve similar synergies through alternative arrangements without merging.

While rare, some competition authorities shared examples of cases where efficiency claims met certain criteria, even if they were not decisive in the outcome. These examples also included instances where efficiencies were considered in the design of remedies or in other areas of competition enforcement, such as horizontal agreements. Such cases offer insight into the types of evidence authorities consider relevant when assessing efficiencies.

6. There is an ongoing debate on whether efficiencies analysis should be expanded to consider a broader set of benefits and whether this implies competition authorities adjusting their standards for reviewing efficiencies.

One of the key areas of ongoing debate is whether efficiencies should play a more prominent role in merger reviews conducted by competition authorities—particularly in relation to expanding the scope of analysis beyond traditional competition effects. Recent proposals suggest that efficiency assessments could also support broader public policy objectives, such as the transition to green technologies, fostering innovation, or advancing industrial policy goals. At the same time, rising levels of market concentration in many sectors have prompted calls for stricter merger control, leaving less room for speculative efficiency claims.

Contributions from multiple authorities showed that there are already different ways in which merger laws and regulations consider other interests, although not always in the framework of efficiencies. They may be explicit objectives or principles in the competition law or may be embedded within the criteria to apply the law. There may be explicit requirements in the law to consider them within the merger assessments, as well as exemptions from competition authority reviews or provisions for other public bodies to review the transaction independently. When competition authorities are the ones evaluating these public interests, they are usually required to balance all these other interests against the competition harm, an exercise that can be done as part of the general assessment of the effects of the merger, or simultaneously with the evaluation of efficiencies.

Competition authorities identified some opportunities to include more efficiencies in merger reviews linked to remedy design. Remedies may be a way to compensate for concerns on the verifiability of efficiencies by requiring, for instance, parties to commit to their materialization.

The discussion and contributions indicated that many competition authorities have recently updated—or are considering updates to—their merger assessment guidelines, and in some cases, their broader merger laws and regulations. Despite these developments, there appears to be general agreement that the substantive test for recognising efficiencies should remain unchanged. While evolving market dynamics, such as digitalisation, may lead to greater emphasis on dynamic efficiencies and innovation-related gains, the underlying principles

continue to hold. In practice, it is procedural aspects, such as the timeframe for assessing efficiencies or the evidentiary standards required, that are most likely to evolve.